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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL R. GRAVEN,

Defendant and Appellant.

2d Crim. No. B202905
(Super. Ct. No. 2007018081)
(Ventura County)

Michael R. Graven appeals the judgment entered after a jury convicted him of making a criminal threat (Pen. Code,¹ § 422; count 1), felony disobeying a domestic relations court order (§ 273.6, subd. (d); count 2), misdemeanor disobeying a domestic relations court order (§ 273.6, subd. (a); count 3); inflicting corporal injury on a cohabitant (§ 273.5, subd. (a); count 4); and attempting to dissuade a witness (§ 136.1, subd. (a)(2); count 5). The trial court sentenced him to a total term of six years state prison, consisting of the upper term of four years on the corporal injury count plus consecutive eight-month terms on each of the three remaining felony counts. He contends, and the People concede, that sentencing on either count 1 or count 2 should

¹ All further undesignated statutory references are to the Penal Code.

have been stayed pursuant to section 654. We shall accordingly order the judgment modified to reflect a total term of three years four months.² Otherwise we affirm.

FACTS

Graven began a romantic relationship with Josonna Lyon in December 2005. The following October, Lyon and her daughter Onyx moved in with him. Soon thereafter, Graven became emotionally and physically abusive toward Lyon. On more than one occasion in early 2007, he pulled her hair and told her he wanted to hit her.

On April 7, 2007, Graven sent Lyon an email in which he appeared to agree with Lyon that it was time to end the relationship. Lyon, who received the email while visiting two of her and Graven's mutual friends along with Onyx, sent a reply stating that she agreed "we just need to move on." Graven, however, began calling Lyon on the telephone and asking her to come home. When Lyon suggested that he come talk to her at their friends' house, he refused and implied that he was going to invite another woman over.

The following morning, Lyon left Onyx with her friends and went to Graven's house. When she arrived, Graven told her she was "not allowed" to go into their bedroom. As soon as she entered the room, Graven forced her down and punched her with a closed fist on her back, rib cage, and abdomen.

On April 13, 2007, Lyon left with Onyx and went to a homeless shelter. Graven called Lyon on her cell phone and told her he would have someone find her and beat her up. He also left numerous voicemail messages, 10 of which were played for the jury. In one message, Graven said, "you're going down broad, fucking bitch. Payback's a bitch." In another he told her "a couple girls came by the house looking for you and they want to kick your ass, so I was nice enough to let them know where you live." In his last message left on May 3, 2007, Graven "guaranfuckingtee[d]" that Lyon was going to lose custody of Onyx and said he would "hire a private investigator to follow you and your

² In light of our conclusion, we need not address Graven's alternative claim that the court erred in failing to give a unanimity instruction on the criminal threat count.

stupid ass around." He also sent "personal pictures" of Lyon to her family and friends and posted them on the internet.

Lyon eventually changed her telephone number and applied for a temporary restraining order (TRO). The TRO was granted on May 4, 2007, and personally served on Graven on May 8, 2007. Pursuant to the TRO, Graven was prohibited from contacting Lyon or Onyx by telephone or any other electronic communications device and was required to stay at least 100 yards away from them.

On May 9, 2007, Graven called Lyon on her cell phone after obtaining her new number from a mutual friend. Graven told Lyon he wanted to get back together, and asked her to forget about the TRO. When Lyon said there would be no reconciliation, he called her "stupid" and said she would "get paid back." Lyon hung up and called the police. Deputy Mark Rush arrived at Lyon's house shortly thereafter and was preparing a report when Graven called again. Lyon handed the telephone to Deputy Rush. As soon as the deputy identified himself, Graven hung up. When Graven called again several minutes later, Lyon put him on the speaker phone. Graven cursed at Lyon and told her, "[y]ou just fucking wait, you'll get yours." He hung up when Deputy Rush picked up the telephone and identified himself again.

On May 10, 2007, Graven called Lyon again. In one call he told her, "[y]ou better hope that they get me before I get to you or your daughter because . . . one of you's going to die." He also told her, "I'm looking for you," and "[t]here's always a release date." Lyon believed that Graven would carry out his threat and feared for her and her daughter's lives. After she called Onyx's school to make sure she was safe, she contacted Deputy Rush and notified him of the threat.

Lyon changed her telephone number again, and Graven's calls stopped for awhile. After his arrest, however, he began calling her collect from jail. While Lyon never accepted the calls, she heard brief messages that were recorded during the few seconds that Graven was supposed to be identifying himself as the caller. Shortly before the preliminary hearing, Graven left a message stating, "Don't show up." He also told her

to "Do whatever it takes to get this reversed, get me out of here. I don't care if you have to go to jail."

The court took judicial notice that on January 23, 2007, Graven was convicted of disobeying a domestic relations order that prohibited him from contacting his former girlfriend, Tracy Umathum. The jury also heard evidence regarding Graven's conviction in 2002 for making criminal threats against another former girlfriend, Mona Burt.

Graven testified in his own behalf. He denied ever hitting Lyon, and claimed that she was "obsessed" with him. He acknowledged violating the TRO by calling Lyon on her cell phone, but denied making any threats. He did, however, threaten to call child protective services on behalf of Onyx. He also denied urging Lyon not to appear at the preliminary hearing. He merely said he loved her, and asked her to bail him out.

Graven denied that he ever made any criminal threats against Burt, although he acknowledged writing a letter directing another former girlfriend to beat her up. He admitting doing "some messed up stuff" to Umathum, but denied assaulting her. He acknowledged violating the restraining order involving Umathum, but could not recall whether he had repeatedly threatened her.

DISCUSSION

Graven contends the trial court violated the multiple punishment bar of section 654 by imposing consecutive eight-month sentences on count 1 (making a criminal threat) and count 2 (felony disobeying a court order). The People agree that one of the sentences must be stayed pursuant to section 654 because the offenses arose from the same act and were incident to a single objective.

Section 654, subdivision (a), provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one

provision. . . ." The purpose of the statute "is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense" (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1134.) Multiple punishment is proper only if the evidence demonstrates that the defendant harbored multiple criminal objectives that were independent of each other in committing the offenses. (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1345.)

In order to convict Graven of making a criminal threat as charged in count 1, the jury had to find, among other things, that he threatened to kill or inflict great bodily injury on another person under circumstances that caused the person to whom the threat was conveyed "to be in sustained fear for his or her own safety or for his or her immediate family's safety" (§ 422.) Similarly, a conviction for felony disobeying a court order as alleged in count 2 required proof that Graven's violation of a protective order involved a "credible threat," which is defined as "a threat made with the intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family." (§§ 139, subd. (c), 273.6, subd. (d).) It is undisputed that Graven's convictions on both counts were based on the same act, i.e., the May 10, 2007, telephone call in which he told Lyon, "[y]ou better hope that they get me before I get to you or your daughter because . . . one of you's going to die." Moreover, the People concede that the evidence effectively compels the finding that Graven entertained a single objective in committing both offenses, i.e., to cause Lyon to fear for her and her daughter's safety. Accordingly, we shall order count 2 stayed pursuant section 654.

DISPOSITION

The eight-month term imposed on count 2 is ordered stayed pursuant to section 654. The trial court shall forward a corrected abstract of judgment showing the

amended sentence to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Allan L. Steele, Judge*

Superior Court County of Ventura

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* (Retired judge of the Ventura Sup. Ct. assigned by the Chief Justice pursuant to art. VI,
§ 6 of the Cal. Const.)